

**BOARD OF COUNTY COMMISSIONERS'
(BOCC) CONCURRENCE FORM**



This form must be completed for all staff reports being prepared for BOCC meetings/public hearings and is the cover sheet for the staff report. The original (single-sided) staff report needs to be submitted to the County Manager's Office one (1) week in advance of the scheduled presentation date. For Closed Sessions please submit the original (single-sided) and 8 (double-sided copies) of the staff report.

To: Office of the County Manager

From (Name & Division): Eric Soter, Community Development 49 **Phone #:** 11153

Requested Meeting Date (mm/dd/yr): 08/08/13 **Est. Presentation Time:** 10 minutes

Staff Report Topic:
(The text provided here will also be reflected on the meeting agenda and county's website.)

Consideration of establishing a workgroup to evaluate Transfer of Development Rights (TDR) Options

County Funds Requested/Required: \$0

Type of Meeting:
(Click to place a check mark in the following appropriate boxes.)

☐ Administrative Business (The Consent Agenda Committee determines which items are eligible for the consent agenda.)

☒ Worksession ☐ Closed Session ☐ Public Hearing (a.m. ☐ or p.m. ☐)

☐ BOCC/BOE Mtg. ☐ County/Municipalities Mtg.

☐ Power Point Presentation

Board Action Desired: ☐ Decision ☒ Guidance ☐ Information

Staff Report Review:

This staff report has been thoroughly reviewed first by the appropriate divisions/agencies noted on Page 2 followed by those outlined below :

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> (Page 2)
<input type="checkbox"/> Budget Officer	_____	_____	_____
<input type="checkbox"/> Finance Director	_____	_____	_____
<input checked="" type="checkbox"/> County Attorney's Office	<u>MJC</u>	<u>7/12/13</u>	<u>N</u>
<input checked="" type="checkbox"/> County Manager	<u>ld</u>	<u>7/15/13</u>	<u>N</u>

Other Reviewing Divisions/Agencies:*(Click to place a check mark in the following appropriate spaces.)*

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> <u>(noted below)</u>
<input type="checkbox"/> Animal Control			
<input type="checkbox"/> Business Development & Retention			
<input type="checkbox"/> Citizens Services			
<input type="checkbox"/> Community Development			
<input type="checkbox"/> Emergency Management			
<input type="checkbox"/> Fire & Rescue Services			
<input type="checkbox"/> Health Services			
<input type="checkbox"/> Human Resources			
<input type="checkbox"/> Interagency Information Technologies			
<input type="checkbox"/> Internal Audit			
<input type="checkbox"/> Parks & Recreation			
<input type="checkbox"/> Public Works			
<input type="checkbox"/> Transit Services			
<input type="checkbox"/> Utilities & Solid Waste Management			
<input type="checkbox"/> Other: _____			
<input type="checkbox"/> Other: _____			
<input type="checkbox"/> Other: _____			

Elected Officials or Independent Agencies:

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> <u>(noted below)</u>
<input type="checkbox"/> Board of Education			
<input type="checkbox"/> Board of Elections			
<input type="checkbox"/> Board of License Commissioners			
<input type="checkbox"/> Citizens Care & Rehabilitation Center/ Montevue Assisted Living			
<input type="checkbox"/> Frederick Community College			
<input type="checkbox"/> Frederick County Public Libraries			
<input type="checkbox"/> Sheriff's Office			
<input type="checkbox"/> Social Services			
<input type="checkbox"/> State's Attorney's Office			

Comments:

1. <u>From:</u> _____	<u>Date:</u> _____
2. <u>From:</u> _____	<u>Date:</u> _____
3. <u>From:</u> _____	<u>Date:</u> _____
4. <u>From:</u> _____	<u>Date:</u> _____
5. <u>From:</u> _____	<u>Date:</u> _____



**FREDERICK COUNTY GOVERNMENT
DIVISION OF COMMUNITY DEVELOPMENT**

Eric E. Soter, Director

***Planning & Development Review Department
Land Preservation Program
Anne Bradley, Administrator***

30 North Market Street
Frederick, Maryland 21701
www.FrederickCountyMD.gov
O: 301-600-1474 F: 301-600-1645

Commissioners

Blaine R. Young
President

C. Paul Smith
Vice President

Billy Shreve
David P. Gray
Kirby Delauter

Lori L. Depies, CPA
County Manager

EXECUTIVE SUMMARY

Staff Report Topic: Consideration of establishing a workgroup to evaluate Transfer of Development Rights (TDR) Options

Issue: Should the BOCC direct staff to form a work group to evaluate Transfer of Development Rights (TDR) options in Frederick County?

Background: In a letter to the BOCC dated March 29, 2013, the Farm Bureau submitted a request for the consideration of a proposed text amendment to the Zoning Ordinance to create an "Agricultural Rights Transfer Option" a.k.a. a rural to rural density transfer program (proposed text amendment attached). In general, the proposed text amendment would allow a landowner to transfer development potential in the Agricultural Zoning District to another parcel within the Agricultural Zoning District.

This proposed text amendment was reviewed by the Agricultural Preservation Advisory Board in public session on April 22nd, 2013 as an informational item. The chairman of the Board, Richard Grossnickle, submitted a letter (attached) to county staff outlining the Agricultural Board's concerns with the proposed text amendment.

Staff Recommendation: Staff is requesting direction on this item. Further, staff would support a recommendation to form a work group in order to fully evaluate this request.

Funding Information: N/A



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County Manager

Staff Memorandum

To: Board of County Commissioner

From: Eric Soter, Director *ES*
Community Development Division

Date: August 8, 2013

Subject: Consideration of establishing a workgroup to evaluate Transfer of Development Rights (TDR) Options

ISSUE:

Should the BOCC direct staff to form a work group to evaluate Transfer of Development Rights (TDR) options in Frederick County?

BACKGROUND:

Transfer of development rights (TDR) programs are a market based tool for conserving lands or structures determined to have a public benefits. There are many variations of TDR Programs we can use as examples but the two we will discuss below are traditional TDR programs and a "Rural-to-Rural Density Transfer Program".

Traditional TDR Program: In traditional TDR Programs, jurisdictions typically designate specific sending and receiving areas. Participating farms that are within a sending area would be preserved through the sale of TDRs and the dedication of a permanent preservation easement on the property prohibiting non-agricultural uses. Development rights from the sending area would be purchased by developers and used to increase the residential density of development or allow for greater commercial floor area, on a receiving site. In addition, there may also be more flexible 'by-right' modifications to design standards or other regulatory standards Traditional TDR Programs can either be voluntary or mandatory.

Rural to Rural Density Transfer Programs: Rural to rural density transfer programs typically allow rights to be transferred between farms in the agricultural areas of a county. This type of TDR does not designate specific sending and receiving areas. Rather, certain criteria is assigned to determine which agricultural properties are best suited to be a sending or receiving site on a case by case basis. Any Rural-to-Rural program needs to be carefully crafted so as not to increase development in an area unsuitable and so as not to provide development rights that would otherwise be unachievable.

Proposed Text Amendment: In a letter to the BOCC dated March 29, 2013, the Farm Bureau submitted a request for the consideration of a proposed text amendment to the Zoning Ordinance to create an “Agricultural Rights Transfer Option” a.k.a. a rural to rural density transfer program (proposed text amendment attached). In general, the proposed text amendment would allow a landowner to transfer development potential in the Agricultural Zoning District to another parcel within the Agricultural Zoning District.

This proposed text amendment was reviewed by the Agricultural Preservation Advisory Board in public session on April 22nd, 2013 as an informational item. The chairman of the Board, Richard Grossnickle, submitted a letter (attached) to county staff outlining the Agricultural Board’s concerns with the proposed text amendment.

STAFF RECOMMENDATION:

Staff is requesting direction on this item. Further, staff would support the recommendation to form a work group in order to fully evaluate this request with membership potentially including:

Eric Soter, Director, Community Development
Kathy Mitchell, County Attorney
Michael Wilkins, Development Review
Colby Ferguson, Economic Development
Anne Bradley, Agricultural Land Preservation Program
Farm Bureau Representative
Agricultural Preservation Advisory Board Representative
Association of Realtors Representative
Land Use Council Representative

Attachments

Exhibit #1 – Letter from Frederick County Farm Bureau
Exhibit #2 – Letter from Frederick County Agricultural Preservation Advisory Board

EXHIBIT #1

March 29, 2013

Board of County Commissioners
for Frederick County, Maryland
Winchester Hall
12 East Church Street
Frederick, MD 21701

Re: Proposed Zoning Text Amendment - Agricultural Rights Transfer Option

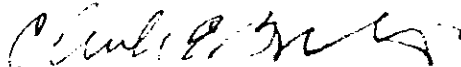
Dear Commissioners:

I am writing on behalf of the Frederick County Farm Bureau to request your consideration of a proposed text amendment to the Frederick County Zoning Ordinance. Enclosed is a draft of the proposed text amendment, which would allow for the transfer of development rights from agricultural parcels, similar to the current practice in Howard County, Maryland.

The Farm Bureau requests your consideration of proposed text amendment, as we believe it will be beneficial to Frederick County and to our membership, since the end results are intended to include greater conservation of tracts of contiguous farm land and flexibility in the exercise of property rights.

Should you decide to introduce the proposed text amendment for consideration by the County, we would look forward to the opportunity to participate in the discussion. Thank you for your time and attention to this matter.

Sincerely yours,



Charles E. Brault

President

Frederick County Farm Bureau

Enclosure (as stated)

To be inserted in Section 1-19.7.300 of the Frederick County Zoning Ordinance:

(D) *Agricultural Rights Transfer Option (ARTO)*

(1) *Purpose and intent.*

(a) To further encourage the conservation of farmland, particularly in areas of the County known for prime agricultural soils, by permitting the transfer of existing development rights from one agriculturally zoned parcel to another, and further by limiting the parcels which will be eligible to receive the transfer of such rights to land zoned Agricultural and located in more densely developed areas of the County.

(2) *Sending parcels.* Properties within the Agricultural zone which meet the following criteria are eligible to be sending parcels:

(a) The parcel has more than one (1) Agricultural subdivision right.

(b) The minimum preservation parcel easement area shall be 20 acres for all sending parcels.

(c) A property consisting of one or more contiguous parcels or lots may be eligible to be a sending parcel if the parcels, when combined meet the size criteria specified in paragraph 2.b. All parcels that do not meet the size criteria specified in paragraph 2.b of this subsection must be combined at the time that the preservation easement agreement for the sending parcel is recorded.

(3) *Receiving parcels.* Any property within the Agricultural zone is eligible to be a receiving parcel, except such portion of the property subject to a recorded easement that reduces or removes its development rights. If a portion of a parcel is encumbered with such an easement, the encumbered area shall be subtracted from the acreage of the parcel to determine the potential receiving area and density.

(4) *Uses Permitted as a Matter of Right.* Uses permitted as a matter of right in the Agricultural zoning district shall be permitted in the properties utilizing ARTO.

(5) *Accessory uses.* Accessory uses shall be as permitted in the Agricultural district.

(6) *Bulk requirements.*

(a) One development right must be retained for the sending parcel. Otherwise, all development rights associated with the sending parcel may be transferred. In the event development rights are transferred from multiple contiguous sending parcels, the sending parcels may be consolidated into one or more parcels, provided that at least one development right is retained on each resultant sending parcel.

(b) The maximum density for the receiving parcel shall be one dwelling unit for every two gross acres.

(c) Density shall be based on Section 1-19.7.300(B) or (C). If additional density is transferred from the sending parcel to the receiving parcel based upon the utilization of the clustering provisions set forth in Section 1-19.7.300(C), then all procedural requirements of Section 1-19.7.300(C) shall apply to the development on the receiving parcel.

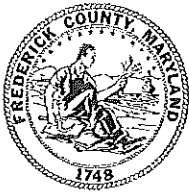
(7) An applicant wishing to utilize the ARTO shall submit an application seeking approval of the transfer on a form as provided by the DPDR.

(a) If no Agricultural clustering development is part of the ARTO application, then DPDR shall process and approve the ARTO application as part of the appropriate staff level review of the subdivision plat.

(b) If Agricultural clustering development is part of the ARTO application, then the same procedure set forth in Section 1-19-7.300(C) shall apply.

(8) A deed of easement, in a form as provided by DPDR, shall be required to be recorded for the sending parcel.

(9) The exchange of development rights shall take place as a private exchange between property owners, subject to approval of the sending and receiving parcels by DPDR in accordance with the procedures set forth herein.

TDR 2013
RECEIVED

Frederick County Agricultural Preservation Advisory Board MAY 11 2013
Winchester Hall *Frederick, Md. 21701*

Mr. Eric Soter, Director
Community Development Division
30 N. Market St.
Frederick, MD 21701

May 10th, 2013

RE: TDR Proposal

Dear Mr. Soter,

The Agricultural Preservation Advisory Board heard an informational overview of the proposed Transfer of Development Rights (TDR) Program submitted to the County by the Farm Bureau. While this Board supports the evaluation of a TDR Program in Frederick County, we do not support the Program as submitted.

It is of the Board's opinion that this proposal would not be beneficial to farmers in Frederick County nor preserve productive farmland areas. Rather, it would create pockets of intense residential development that would result in fragmentation of the Agricultural zoning district, jeopardize the county's certification status with the State, and result in a loss of the majority of State funding we receive to preserve farms. Below please find a list of points that we discussed and feel are important about the proposal as submitted:

- Opening up the Agricultural zoning district to this intense development goes against the County's goals to preserve farmland and prevent the fragmentation of the productive farmland areas.
- Opening up the Agricultural zoning district to development speculation could INCREASE the cost of farmland for sale. Farmers have a hard enough time competing with developers for land in Frederick County and we would not support making it harder for farmers to purchase farmland.
- Designating the entire Agricultural zoning district as both a sending and receiving area will result in an excess supply of rights to send and most likely, much less demand. This would diminish the value of each TDR for sale.
- Sending parcels will likely be parcels that would not be able to actually yield development potential because of lack of road frontage or inability to perc. This program will ensure those rights will be developed in the agricultural areas of the county when as is, they will not be created.
- If we allow the receiving areas to be located within Priority Preservation Areas we will likely lose State funding for farmland preservation.
- Counties with successful TDR Programs require the purchase of TDRs for any upzoning to increase density for new development projects.
- Development that could occur on receiving parcels could be more costly because it will likely trigger APFO and require road improvements and school fees.

Lastly, our strict Agricultural Zoning density will no doubt do a better job of preserving farmland than the proposed TDR Program. Again, this Board supports an open evaluation of TDR's in Frederick County and hope we can participate should there be an evaluation committee formed.

I hope you feel free to contact me if you would like to discuss this further at (301) 662-8951.

Thank you,

A handwritten signature in cursive script, reading "Richard Grossnickle".

Richard Grossnickle
Chairman, Ag. Board